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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 DAVID LEIBOWITZ, et al.,

5 v. Plaintiffs,

6 19 Civ. 9236 (KPF)  
7 iFINEX INC., et al., 20 Civ. 169 (KPF)  
8 Defendants. 20 Civ. 211 (KPF)  
9 20 Civ. 453 (KPF)

10 Oral Argument

11 Before:  
12 HON. KATHERINE POLK FAILLA,  
13 District Judge  
14 APPEARANCES  
15 ROCHE CYRULNIK FREEDMAN LLP  
16 Attorneys for Leibowitz Plaintiffs 19 Civ. 9236  
17 BY: KYLE W. ROCHE, ESQ.  
18 JOSEPH M. DELICH, ESQ.  
19 SELENDY & GAY PLLC  
20 Attorneys for Leibowitz Plaintiffs 19 Civ. 9236  
21 BY: CAITLIN J. HALLIGAN, ESQ.  
22 SCHNEIDER WALLACE COTTRELL KONECKY WOTKYNS LLP  
23 Attorneys for Leibowitz Plaintiffs 19 Civ. 9236  
24 BY: TODD M. SCHNEIDER, ESQ.  
25 MATTHEW S. WEILER, ESQ.  
KIRBY McINERNEY LLP  
Attorneys for Young Plaintiffs 20 Civ. 169  
BY: KAREN M. LERNER, ESQ.  
DAVID E. KOVEL, ESQ.  
ANTHONY E. MANEIRO, ESQ.

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1 APPEARANCES  
2 (Continued)

3 RADICE LAW FIRM, P.C.

4 BY: JOHN D. RADICE, ESQ.

5 GLANCY PRONGAY &amp; MURRAY LLP

6 BY: GREGORY B. LINKH, ESQ.

7 ROBBINS GELLER RUDMAN &amp; DOWD LLP

8 BY: BRIAN E. COCHRAN, ESQ.  
SAMUEL H. RUDMAN, ESQ.

9 WALDEN MACHT &amp; HARAN LLP

10 BY: JAMES WALDEN, ESQ.  
VERONICA M. WAYNER, ESQ.  
DANIEL J. CHIRLIN, ESQ.

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1 (Case called)

2 THE COURT: Good afternoon to everyone. There are  
3 four of these cases, and three of you are proposing yourselves  
4 as lead plaintiff's counsel.

5 With respect to the plaintiffs in what I'll call the  
6 Leibowitz action, may I have the appearances of counsel,  
7 beginning with plaintiffs' counsel, and may I know in  
8 particular who will be arguing the motion for lead plaintiff's  
9 counsel. Thank you.

10 MR. ROCHE: Kyle Roche for the Leibowitz plaintiffs,  
11 and I will be arguing our motion with Caitlin Halligan.

12 MS. HALLIGAN: Good afternoon. Thank you, your Honor.

13 THE COURT: Two of you are going to argue? Can one of  
14 you argue this or no?

15 MR. ROCHE: We'd prefer -- well, we feel we both can  
16 demonstrate the quality of our firms' representation, but if  
17 your Honor prefers, one of us can argue.

18 MS. HALLIGAN: And we promise to be expeditious, your  
19 Honor.

20 THE COURT: I do appreciate that. The issue is,  
21 you're feeding right into my argument, which is that are there  
22 too many lawyers on your team, but we'll figure that out. No,  
23 don't worry. I'll give you that opportunity. Who else is with  
24 you?

25 MR. SCHNEIDER: Your Honor, Todd Schneider. I'm going

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1 to listen.

2 THE COURT: That is a great idea. Thank you very  
3 much.

4 Okay. Sir.

5 MR. DELICH: Joseph Delich, your Honor. I'll also be  
6 listening as well.

7 THE COURT: Okay. Thank you.

8 And that is it for the Leibowitz team. Someone else  
9 on the Leibowitz team? Sir, yes.

10 MR. WEILER: Matt Weiler, and I'll be listening as  
11 well.

12 THE COURT: I appreciate that. Thank you.

13 May I ask the defendants -- are you at the back table?  
14 Thank you.

15 Sir, does your firm have a horse in this particular  
16 set of races?

17 MR. WALDEN: No, your Honor.

18 THE COURT: All right. I do appreciate you attending  
19 nonetheless. And you are, sir?

20 MR. WALDEN: Jim Walden, your Honor.

21 THE COURT: Thank you. And with you at the table are?

22 MS. WAYNER: Veronica Wayner.

23 THE COURT: Thank you. And?

24 MR. CHIRLIN: Daniel Chirlin.

25 THE COURT: Thank you. And I won't ask you to

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1 reintroduce yourself in each of the cases. I know who you now  
2 are. Thank you very much.

3 In the Young matter, may I ask, please, for folks to  
4 introduce themselves and tell me who is arguing the motion.  
5 Thank you.

6 MS. LERNER: Good afternoon, your Honor. Karen Lerner  
7 from Kirby McInerney. I will be arguing the motion.

8 THE COURT: Terrific. Thank you.

9 And with you at the table?

10 MR. RADICE: John Radice from the Radice Law Firm,  
11 your Honor.

12 THE COURT: Okay. And anyone else from the firm?  
13 Yes. Go ahead, please.

14 MR. MANEIRO: Anthony Maneiro, your Honor.

15 THE COURT: Yes. Thank you.

16 MR. KOVEL: And David Kovel, your Honor.

17 THE COURT: Thank you very much. Thank you.

18 In the Faubus litigation?

19 MR. LINKH: Greg Linkh, your Honor.

20 THE COURT: And you're actually the one who has not  
21 proposed a team, is that correct?

22 MR. LINKH: Yes. We filed a motion in support of the  
23 Radice and Kirby McInerney firm, but we are not seeking --

24 THE COURT: In that respect, sir, do you want to be  
25 heard with respect to your motion in support or is it enough to

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1 rest on your written submissions?

2 MR. LINKH: I'll rest on the papers unless you have  
3 any further questions for me.

4 THE COURT: I do not. But thank you very much.

5 All right. And in the Ebanks matter, which -- the  
6 gentleman standing is someone other than Ebanks. Let me --

7 MR. COCHRAN: That's correct, your Honor. Brian  
8 Cochran from the Robbins Geller firm. I will be arguing the  
9 motion. And with me in the jury box is Samuel Rudman.

10 THE COURT: Thank you.

11 MR. RUDMAN: Good afternoon, your Honor. I'll be  
12 watching.

13 THE COURT: You'll be watching. I do appreciate that.  
14 Thank you.

15 All right. I'm going only in order of the date of  
16 filing of the complaint, but I'd like to address the Leibowitz  
17 motion first.

18 Mr. Roche, I'll let you and Ms. Halligan trade off as  
19 need be. Is it your intention to speak from there or speak  
20 from the podium?

21 MR. ROCHE: If I can speak from the podium.

22 THE COURT: If you can do that without inconveniencing  
23 all of the other attorneys at the table, I'll let you do that.

24 MR. ROCHE: Not a problem.

25 THE COURT: You say not a problem. We'll see what

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1 they say. All right.

2 MR. ROCHE: Good afternoon, your Honor.

3 THE COURT: Sir, good afternoon.

4 Let me ask this question, please. Am I correct -- and  
5 I may not be -- that any of the three proposed lead counsel  
6 groups would be adequate under Federal Rule of Civil Procedure  
7 23; it's just a question of who best represents? Or do you  
8 believe that one of your competing groups is simply inadequate  
9 and it would be inappropriate, indeed reversible error, for me  
10 to appoint someone else as lead plaintiff counsel?

11 MR. ROCHE: No, your Honor. Our position is that all  
12 counsel here is adequate and all three applications consist of  
13 excellent attorneys from top-tier firms.

14 THE COURT: Okay.

15 MR. ROCHE: So our position, you know, unless your  
16 Honor has any further preliminary questions, you know, our --

17 THE COURT: Actually, just following on that, sir --

18 MR. ROCHE: Yes.

19 THE COURT: -- if you agree and if the other folks in  
20 the courtroom agree, I'd prefer not to get into a discussion of  
21 the legal issues, because I think everyone is in agreement as  
22 to what the governing law is, and I'd really like to focus on  
23 factual issues that make your proposed team the team that I  
24 should enshrine as lead plaintiff counsel.

25 MR. ROCHE: Yes. I think that comes down to two

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1 points, your Honor:

2                 First, I think we've shown the greatest leadership so  
3 far in this class action for two reasons. We were the first to  
4 investigate the market manipulation at issue and file the first  
5 of its kind class action.

6                 And two, since filing this action, we've put together  
7 the team, the best team with cross-functional expertise to  
8 litigate this case on behalf of this class.

9                 And, you know, I think what sets our application apart  
10 is expertise in the subject matter, and that being  
11 cryptocurrency. This is a market manipulation case, but unlike  
12 other market manipulation cases that deal with stocks or  
13 commodities, cryptocurrencies are fundamentally unique and  
14 relatively new, and this case does potentially represent  
15 importance beyond just this case, given that the law on  
16 cryptocurrency is relatively new.

17                 As your Honor likely appreciates from the *Tucker v.*  
18 *Chase Bank* matter, cryptocurrencies at a minimum present  
19 definitional issues, difficult definitional issues. These  
20 conceptual difficulties will be even more present in this  
21 litigation because the implicated statutes are far more  
22 complex. And the competing complaints filed in this litigation  
23 already demonstrate this. There's been a lot of briefing  
24 relating to the scope of the competing complaints, primarily on  
25 two points: (1) should this case be narrowed to just Bitcoin

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1 purchasers; and (2) what is required to plead standing under  
2 the CEA's private cause of action. And I think our application  
3 shows that we've thought through these issues, both from a  
4 legal and technical perspective.

5 And to the first issue, we believe that it is not in  
6 the class's interest to carve out Bitcoin purchasers because  
7 the evidence shows that the defendants directly manipulated the  
8 cryptocurrency market as a whole.

9 THE COURT: Please pause for a second, sir.

10 MR. ROCHE: Yes.

11 THE COURT: One of the competing firms -- I believe it  
12 was the Robbins Geller firm -- suggested that in so doing, you  
13 are in fact subjecting yourself and class members to the  
14 possibility of an intraclass conflict. Could you speak to that  
15 issue, please.

16 MR. ROCHE: Yes. I don't think -- there is no  
17 intraclass conflict here.

18 THE COURT: Okay. Well, I assumed you'd take that  
19 position. But maybe you could tell me why.

20 MR. ROCHE: Yes, a couple points. One, the fact of  
21 the matter is that most people who buy many cryptocurrencies  
22 also purchase Bitcoin so, you know, it is the case with my  
23 clients in particular. If we were to create subclasses here,  
24 you'd be putting plaintiffs in separate lawsuits, and, you  
25 know, that speaks to our understanding and why we brought the

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case on behalf of all cryptocurrency holders and purchasers is that this cryptocurrency market does really work, for purposes of the statute, as one market. And as Judge Gardephe held in the class counsel decision in the *Treasury Securities* litigation, "Absent a fundamental conflict between class members, the Court is not required to divide the class."

As I've, you know, articulated before, there's no fundamental conflict here. The people who purchased these cryptocurrencies, and who are harmed by the defendants' conduct, are people who typically purchase many cryptocurrencies, especially when you're looking at the peak of the bubble, which happened in 2017 and 2018.

And I'd like to just make one other point on the matter. The Griffin report, which was first published in 2008, which I think most of our applications have represented, serves as a fundamental piece of the substance of our allegations. His central thesis was, "Alternatively, if Tether is 'pushed' on market participants, Bitfinex supplies Tether regardless of demand from investors with fiat currency to purchase Bitcoin and other cryptocurrencies."

And your Honor, I think for purposes of this particular point, it would be helpful if I handed up to the Court a -- Joe, do you have a copy of that? I think this graph, which is from page 43 of the Griffin report, which was filed as Exhibit 30 to our complaint --

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1 THE COURT: Yes, sir.

2 MR. ROCHE: -- helps illustrate this point.

3 So, your Honor, and I'll -- if you look at -- does  
4 everyone have a copy?

5 THE COURT: You're fine. Go ahead.

6 MR. ROCHE: So if you look at the top of this -- and  
7 this is the Griffin report we're looking at -- the top part,  
8 Exhibit A is Bitcoin. And what this shows is that in the hours  
9 before Tether issuances, Bitcoin's price is going down. And  
10 then shortly after Tether is issued, Bitcoin's price pops back  
11 up. And if you look right below that, the other major  
12 cryptocurrencies, which our plaintiffs are the only ones who  
13 have purchased, all six other major cryptocurrencies  
14 demonstrate the exact same pattern. Shortly before Tether is  
15 issued, the price goes down, and then right after, the price  
16 goes back up.

17 And to separate the class into just Bitcoin purchasers  
18 I think presents, frankly, discovery issues. Defendants are  
19 going to argue, well, the class is just Bitcoin so you don't  
20 get our transactional data from our exchange related to  
21 purchases of other cryptocurrencies, and, you know, that is not  
22 in the class's interest because the scheme perpetuated by the  
23 defendants was complex. They used Tether to purchase not just  
24 Bitcoin but, as Griffin points out, other cryptocurrencies as  
25 well to inflate the market, depending on what was most

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1 profitable at the time.

2 Your Honor, unless you have any further questions, I'd  
3 like to -- I said we'd be brief -- have Caitlin Halligan come  
4 up here and speak to the strength of the team.

5 THE COURT: All right. I may direct my questions to  
6 her, but thank you very much.

7 Ms. Halligan.

8 MS. HALLIGAN: Thank you, your Honor.

9 Let me be very brief, and let me start by answering  
10 the first question that you asked, which is: Do we have too  
11 many law firms here.

12 THE COURT: Yes.

13 MS. HALLIGAN: So rather than file follow-on  
14 complaints, we pooled our resources because we think that  
15 together, our shared expertise will best serve the class. In  
16 terms of how that would work and why it would be efficient, as  
17 you have seen, Mr. Roche has substantial, deep, and I think  
18 probably unparalleled among the folks in this room, expertise  
19 in cryptocurrency and how it works that would be extremely  
20 beneficial in terms of moving us through this case, including  
21 discovery, without needing to rely as heavily on experts.

22 Mr. Schneider's firm has deep, deep class action experience.

23 He has handled many cases around the country. And Selendy &  
24 Gay has substantial experience handling very complex financial  
25 matters and other litigation, and we also have substantial

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1 expertise with respect to the state law claims that are at  
2 issue here, as well as RICO. So our view is that together we  
3 could best serve the Court and the class in what is a very  
4 complicated case involving a lot of novel issues of fact, of  
5 technology, and of law.

6 THE COURT: The concern I have -- and it's borne out  
7 by other cases in which I've been involved -- is that sometimes  
8 the team can just be too unwieldy. My concerns are several.  
9 One is that in other cases that I've had, I've made clear to  
10 the team that I will only speak with one person, that I only  
11 want to have communications, from my perspective, with one  
12 person. And though it will sound a little bit as though I'm  
13 contradicting myself, I do want to minimize the possibility of  
14 unnecessary duplication of effort or what I fear is like a  
15 conference call that goes on every day where everybody just  
16 tells everybody else something because of the sheer numerosity  
17 of attorneys. How can I have comfort that three law firms is  
18 not too many law firms?

19 MS. HALLIGAN: Well, first of all, with respect to the  
20 first point your Honor raised, I can certainly represent to you  
21 that going forward, one of us and only one of us will address  
22 the Court.

23 THE COURT: Okay.

24 MS. HALLIGAN: And to the extent that that protracted  
25 proceedings today, we apologize to that. Really the reason

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1 that we both wanted to get up is to explain why it was that  
2 Mr. Schneider's firm and our firm, having seen the first  
3 complaint that was put together, thought that it was what would  
4 most effectively represent the interests of the class. So that  
5 was really what we wanted to convey to your Honor.

6 In terms of duplication, I can assure you that, as we  
7 did in thinking about the hearing today, that there will be no  
8 unnecessary communications with the Court or otherwise. I  
9 think we all are fairly busy with a range of matters and will  
10 be very judicious in handling that.

11 THE COURT: I wasn't being clear enough.

12 MS. HALLIGAN: Pardon me, your Honor.

13 THE COURT: No, no. My concern is not merely that I'd  
14 have 20 of you writing me at the same time; my bigger concern  
15 is that if and when there were to be a fee petition in the  
16 case --

17 MS. HALLIGAN: Yes.

18 THE COURT: -- we're getting miles and miles ahead of  
19 ourselves -- that I would see 20 different people on a  
20 conference call and all billing for that conference call. So  
21 what I'm trying to understand is, if you can share --

22 MS. HALLIGAN: Yes.

23 THE COURT: -- what would or has been put in place to  
24 minimize the amount of wasted time getting everybody up to  
25 speed.

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1 MS. HALLIGAN: Well, for example, your Honor, we have  
2 thought through how we would allocate responsibilities going  
3 forward. Maybe sharing that with you will give you some  
4 comfort on that front.

5 So for example, I think that with respect to a lot of  
6 the fact discovery that would take place here, Mr. Roche's  
7 firm, especially because of the deep expertise they have and  
8 the work that they have already done in retaining two experts,  
9 would handle the bulk of that. I think that Selendy & Gay  
10 would handle, for example, working with an expert to look at  
11 the economics of the manipulation, and it would probably do  
12 some amount of the work with respect to depositions.

13 Mr. Schneider's firm I think would take the laboring oar with  
14 respect to class certification and class discovery. So we've  
15 already had a conversation among ourselves, your Honor, about  
16 how we would divide that. And I think that Selendy & Gay would  
17 take the lead on briefing and arguing substantive motions  
18 because it's an area where we have a lot of expertise,  
19 including in this courthouse. So we've already tried to put in  
20 place I think a strategy that would ensure that there wouldn't  
21 be any unnecessary duplication.

22 I would also just add, your Honor -- and I'm sure this  
23 is evident from the papers -- that the Kirby group I think also  
24 already has three firms -- the Kirby, Radice, and it looks to  
25 me like Glancy as well. And so I think that we are not alone

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1       in recognizing that making sure there are sufficient resources  
2       to properly handle this absolutely in a cost-efficient way but  
3       handling it appropriately is the right way to go.

4                  THE COURT: I think I understand what you're just  
5       saying. I'm assuming -- I think the answer is that I know this  
6       already, that I have the fees of the teams that have been  
7       presented to me -- I cannot say, well, two of you can stay but  
8       I will not have a third law firm on the case, because that  
9       would be a level of micromanaging I wouldn't have to do. I  
10      would really only get involved if it got to the point where it  
11      would complicate things or whether things were not presented  
12      adequately to me or I began to feel as though there was  
13      unnecessary churning of the amount. But I don't get to tell  
14      you to have two firms, correct?

15                  MS. HALLIGAN: Do you mean suggesting that we go from  
16      three to two?

17                  THE COURT: Indeed. Indeed.

18                  MS. HALLIGAN: Sort of a maybe a *Survivor* in the  
19      courtroom?

20                  THE COURT: Exactly. Who are you voting off the  
21      island?

22                  MS. HALLIGAN: Yes. Your Honor, obviously, you know,  
23      we will follow whatever guidance the Court suggests, but truly,  
24      I can assure you that we will not be looking to duplicate or,  
25      you know, be anything other than exceedingly efficient. And a

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1 number of us I think have come from other experiences where  
2 efficiency has been at a premium. I think that that's how we  
3 approach our work just as a matter of due course, and I can  
4 assure the Court that we would take on this assignment in  
5 exactly that same way. It's also what is obviously going to  
6 serve the best interests of the class, but I think it's how we  
7 all prefer to practice as well.

8 THE COURT: You argue that a lot of what's in the  
9 three complaints that follow the Leibowitz complaint is lifted  
10 from the Leibowitz complaint. Is it possible that that's just  
11 because it's information that's out there in the public and  
12 it's come from that publicly available information, or do you  
13 actually believe that they are lifting language, or lifting the  
14 work product of your complaint?

15 MS. HALLIGAN: Your Honor, you know, whatever's in the  
16 complaint is in the complaint. I do think some of the  
17 paragraphs in some of the complaints read remarkably similarly.  
18 But here's what I think the value added is that Mr. Roche and  
19 his firm brought to the table in crafting the first complaint.

20 So if you step back, there are two pieces of  
21 information out there in the world. One is the Griffin report,  
22 which has since been updated, but it was updated after the  
23 complaint was filed, and that report lays out and explains the  
24 way in which US dollar Tether issuances were transacted in a  
25 way that gives rise to an inference of manipulation. The

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1 second piece of information is an affirmation filed by the New  
2 York Attorney General's Office in a GBL Section 354 action that  
3 the Attorney General's Office brought under the Martin Act to  
4 put a lock on funds, and in that application, the Attorney  
5 General details concerns about whether or not there's  
6 sufficient funds to make it credible that there is actually a  
7 one-to-one dollar backing. So those two pieces of information  
8 were in the world, and Mr. Roche and his firm not only put  
9 those together but did the work to understand what legal claims  
10 those might give rise to. So it's very different than, for  
11 example, a stock-drop case, where the claims are fairly  
12 self-evident, or a case where either the Justice Department or  
13 the New York Attorney General's Office engages in an  
14 investigation and issues an assurance of discontinuance and  
15 then you quickly see follow-on litigation that's tied to those  
16 findings. The work of understanding the implications for the  
17 class members was really the value added. So to the extent the  
18 theories are the same or the graphic representation of those  
19 U-shaped price curves that you see in one of the complaints, I  
20 think that that's simply a representation of the allegations  
21 set forth in the first complaint.

22 THE COURT: Realizing that in having you speak first  
23 there's a certain advantage that you have over the other two  
24 teams that are putting themselves forward, do you want to speak  
25 now about why you believe your team should be picked over the

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1 other two. And you've spoken in all positive terms, and in an  
2 appropriate but nonetheless critical way, I would like you to  
3 comment on your competition.

4 MS. HALLIGAN: Sure.

5 So obviously, your Honor, you have before you I think  
6 very expert, seasoned law firms who have particularly deep  
7 experience in the class action front. I think that the  
8 cryptocurrency expertise that we bring to the table will be  
9 essential for a couple of reasons. And I don't think there's  
10 any indication that it's matched, both with respect to  
11 Mr. Roche and his colleagues as well as the experts that  
12 they've retained.

13 So first of all, I think understanding how these  
14 transactions work sufficient to elucidate how there is  
15 manipulation, I think that that's the nub of this case, and so  
16 being up the learning curve on that I think is a tremendous  
17 advantage to the class. And I also think it will make  
18 discovery much more efficient. Some of the discovery here will  
19 be about understanding how you unpack the blockchain ledger.  
20 Now the details of that I would leave to Mr. Roche, but I  
21 certainly understand enough to know that being able to come to  
22 the table and have a sophisticated conversation about that with  
23 our experts will be much more efficient.

24 I think also, when you look at the scope of the  
25 complaints, they are different in meaningful ways. As

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1 Mr. Roche explained, I think, especially because the Griffin  
2 report identifies at least six other cryptocurrencies -- and I  
3 think that's why he handed that up -- in which the pricing  
4 curves look the same, there is every reason to think that the  
5 manipulation goes beyond Bitcoin itself, and so we don't see  
6 any reason to artificially narrow the class to Bitcoin  
7 purchasers. And in addition, I think there may be questions  
8 about whether or not the plaintiff in the case alleging simply  
9 Bitcoin purchases, not purchases of futures, whether there is  
10 actually a viable cause of action under the Commodities  
11 Exchange Act, and those are four of the seven claims in that  
12 complaint.

13 Finally, I think that the inclusion of the state law  
14 claims is very important here. The General Business Law  
15 Section 349 is extraordinarily broad. It covers any  
16 consumer-oriented conduct. Now Mr. Walden has already  
17 suggested to the Court in his premotion letter that he thinks  
18 it's not within the scope of the statute. I think we'd have a  
19 very different view on that point. But I can tell you that we  
20 have very deep experience litigating the scope of that statute  
21 before the New York Court of Appeals, including as recently as  
22 two weeks ago. And so I think our ability to understand the  
23 scope of that possible allegation and claim is something that  
24 would be very advantageous to the class.

25 THE COURT: All right. Anything else?

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1 MS. HALLIGAN: Last point I would make is this, your  
2 Honor: I think this is a case, probably obviously, that poses  
3 tremendous novel questions of law and fact, and we are very  
4 much committed to certainly advancing the interests of the  
5 class, making sure that this case is litigated as vigorously as  
6 it should be but also to helping the Court make its way through  
7 this new technology, new legal issues, in a way that is  
8 helpful.

9 THE COURT: Thank you very much.

10 MS. HALLIGAN: Thank you, your Honor.

11 THE COURT: Ms. Lerner, do you wish to be heard now on  
12 behalf of the Kirby firm, Kirby team. I don't know how you've  
13 defined yourselves.

14 MS. LERNER: Yes, your Honor. I think we've defined  
15 ourselves as the Kirby-Radice team.

16 THE COURT: Thank you so much. I'm sorry, Mr. Radice,  
17 for leaving you out.

18 Yes. Okay. Then let me hear from you, please, as to  
19 why.

20 MS. LERNER: Good afternoon, your Honor.

21 THE COURT: Good afternoon.

22 MS. LERNER: I'd like to discuss briefly five reasons  
23 why I believe that the Kirby-Radice team should be appointed  
24 interim co-lead counsel.

25 First reason is, we have filed the most original

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1 investigation here. It far surpasses any other complaint  
2 currently before your Honor. It's not that we have every  
3 reason to believe; it's that we actually have included three  
4 specific regression analyses. We have identified for the first  
5 time at least 236 specific transactions over 115 days that we  
6 have alleged that the defendants manipulated Bitcoin prices on  
7 U.S.-based exchanges. And for the absence of doubt, let me  
8 just say one more time, there is no other complaint that  
9 includes that level of investigation.

10 The second is that we are the most qualified. Your  
11 Honor, any suggestion here that our complaint is in any way  
12 derivative denigrates our experience in this area to the extent  
13 that we were working on this matter in particular months before  
14 any other complaint was filed. We are class action lawyers.  
15 We come from two experienced law firms. This is what we do  
16 every single day. We are antitrust, commodities lawyers. We  
17 focus on esoteric financial instruments in derivatives, on  
18 exchanges. This is really what we do.

19 The third reason, your Honor, resources. We have  
20 already committed significant time and investment in this case,  
21 efforts, and we have more than ample wherewithal, just based on  
22 our experiences, to see this through to resolution.

23 THE COURT: Let's pause on that.

24 MS. LERNER: Sure, your Honor.

25 THE COURT: Because it has two parts to it, and the

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1 one is what you've done so far, and the second part of it is  
2 what you intend to do in the future. You've heard my  
3 discussions with the first team, Mr. Roche and Ms. Halligan,  
4 about my concerns about there being overstaffing or too many  
5 lawyers on the case, or a structure that would be inefficient  
6 in terms of either communicating with me or getting information  
7 out to the team. I would like to hear from you on that point,  
8 and then I'll work backwards to the work that you've done so  
9 far. So if you could speak to that point first, please.

10 MS. LERNER: Sure, your Honor.

11 In terms of how we plan to work this matter here,  
12 we've given a lot of thought to it. It's based on our past  
13 experiences in numerous, large antitrust commodities class  
14 actions. I understand your Honor's concern completely when you  
15 talk about fee applications, because we file them regularly  
16 before the court. Right now we're seeking final approval in  
17 the largest futures-only class action matter in history of that  
18 settlement, before Judge Buchwald in this courthouse. So I  
19 understand.

20 I don't believe that two law firms, the Kirby-Radice  
21 team, would be overstaffing. We have slightly over 40 lawyers  
22 who are available to be working on this matter. We've thought  
23 about it very carefully, based on expertise, based on what we  
24 do all the time. We know our strengths. We have an incredibly  
25 strong working relationship, having previously worked with the

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1 Radice firm on other class actions, that we know that nobody  
2 puts their ego here in terms of the type of work that we're  
3 going to do. What we're really interested in is serving the  
4 best interests of the class.

5 THE COURT: On the issue of the work that you've  
6 committed to date, I'd like to understand that a little bit.  
7 To the extent that what you're saying is, as you began by  
8 saying, yours is the most original complaint, yours has the  
9 most original work and it should be recognized, I understand  
10 that, but I'm sure you're not arguing that just because you've  
11 spent a lot of time thinking about these issues, that is  
12 something that necessitates my appointing your team of firms as  
13 co-lead counsel, right? Am I correct?

14 MS. LERNER: Absolutely, your Honor.

15 THE COURT: Okay.

16 MS. LERNER: Of course. You know, what I'm really  
17 getting at here is two things. The first thing I think is the  
18 idea that first to file involves some sort of -- deserves some  
19 sort of credit in this case. Here, the real reason, you  
20 know -- if you look like at the *GSE Bonds* case, the real reason  
21 why first to file gets points for originality is because of  
22 just that -- it's original. That's just simply not the case  
23 here. Instead, there aren't a whole bunch of copycat cases  
24 that were filed after. The case that was actually filed after  
25 is ours. That case is completely original. So I would say,

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1 you know, that in terms of why I would talk about our original  
2 complaint and the first to file, that's really why.

3 The second thing I would say is, in terms of the  
4 original investigation here that we've done, you need that in  
5 order to withstand a motion to dismiss, and, your Honor, we  
6 know that this case was filed in October by the Roche law firm.  
7 We had already, like I said, you know, worked on this for  
8 months. The reason why we decided to file in the Western  
9 District of Washington is specifically because we allege that  
10 the defendants manipulated the price of Bitcoin through  
11 U.S.-based exchanges. One of those happens to have been  
12 headquartered in Seattle. We then went ahead, we filed in  
13 Seattle, where we had planned, in the Western District of  
14 Washington. That was November 22nd.

15 On December 2nd, your Honor, the Roche firm, the Roche  
16 team sent your Honor a letter and said that they had intended  
17 to stand on their complaint, and we really felt that our  
18 complaint already had offered them particularized allegations  
19 that would have assisted in withstanding a motion to dismiss.  
20 At that point, your Honor, we really thought that for  
21 efficiency's sake, how often we litigate here, it just became  
22 clear that the two cases needed to come together. We became  
23 incredibly concerned. In addition, you know, the Griffin  
24 article had already been updated, and we needed to avoid the  
25 potential for inconsistent rulings. We then worked

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1 cooperatively with the defendants. They agreed to accept  
2 service of process in this district and to facilitate  
3 consolidation. And that's what brought us here.

4 We believe that the complaint that we filed -- and I'm  
5 more than happy to go into why I believe that our investigation  
6 actually is much stronger than any of the other complaints  
7 here, more original. We believe that our complaint is the one  
8 that can better withstand a motion to dismiss.

9 THE COURT: Is it possible that the Leibowitz team,  
10 "Roche and Pals," could update their complaint in order to  
11 include the information that you've brought to my attention in  
12 your complaint?

13 MS. LERNER: Sure, your Honor.

14 THE COURT: I'm not saying they would. They haven't  
15 yet said they would either. But I think I'm understanding you  
16 to say that part of the reason that you're here is you're  
17 concerned that a class that you were seeking to represent in  
18 the Western District of Washington was going to be ill served  
19 in this district. Correct?

20 MS. LERNER: Your Honor, I wouldn't say ill served. I  
21 don't want to do the defendants' work for them. And I  
22 definitely don't want to say anything negative about any of the  
23 other complaints, from a legal perspective, that have been  
24 filed. But I will say that we do have more particularized  
25 allegations in our complaint that would have been better able

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1 to withstand a motion to dismiss and that there was a grave  
2 concern about inconsistent rulings in the Western District of  
3 Washington if we had remained there.

4 The other option was we could have gone through an  
5 MDL. That would have slowed things down tremendously. Again,  
6 your Honor, we were thinking very strongly about the best  
7 interests of the class, and it seemed that getting as quickly  
8 as possible -- which is exactly what we did -- here before your  
9 Honor, working cooperatively with the defendants to get here,  
10 seemed like the best course of action.

11 THE COURT: One of the things that you put forward as  
12 your strength is the proprietary algorithm. I'm not sure you  
13 can disclose it to me because it would be less proprietary, but  
14 I would like to understand, because your adversaries are  
15 suggesting that your proprietary algorithm isn't all that big  
16 of a deal and a lot of work that is analyzed and discussed in  
17 your complaint is derivative of either Professor Griffin's  
18 article and its update or things that are readily available to  
19 the public. Perhaps you could explain why they are incorrect.

20 MS. LERNER: Your Honor, it's not just the proprietary  
21 algorithm, which I would not want to disclose the methodology  
22 behind it, but I'm more than happy to talk about it. It's in  
23 no way just a matter of what the Leibowitz team did. Basically  
24 after they saw our complaint, in their opposition to our motion  
25 papers they blew up their own publicly available graph and they

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1 noticed that there were these repetitive U-shaped curves.  
2 That's not really where, your Honor, you know, our proprietary  
3 algorithm came in. Where our proprietary algorithm came in was  
4 that we then went on and we did an econometric analysis in  
5 order to determine 115 specific days, 115 specific days with  
6 236 specific instances where there was manipulation of Bitcoin  
7 directly through -- and this is the important part, your  
8 Honor -- U.S.-based exchanges. There's nothing like that that  
9 exists, and there's nothing derivative about that or out there  
10 in the publicly available information that did not involve our  
11 experts that we worked very strongly with in order to come up  
12 with that.

13 THE COURT: Okay. Could you speak to the issues  
14 raised by the Robbins Geller firm with respect to intraclass  
15 conflicts and the advisability, or not, of defining the class  
16 more narrowly.

17 MS. LERNER: Your Honor, I can. I just have two more  
18 things that --

19 THE COURT: Of course. Oh, yes. Points 4 and 5?  
20 Yes. That's fine. As long as you remember --

21 MS. LERNER: Yes, and I intend to be brief, but I just  
22 want to also say that in terms of pleading standards, we have  
23 three regressions, so I didn't even get to that yet. You know,  
24 and I'll just say about those regressions that two of them deal  
25 with, in terms of pleading standards, demonstrating the

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1 lockstep pricing relationship between Bitcoin and Bitcoin  
2 future prices.

3 THE COURT: Can you slow down for court reporter and  
4 judge. Thank you so much.

5 Okay. Go ahead.

6 MS. LERNER: I do this in depositions too. I  
7 apologize to the court reporter.

8 But basically one of our regressions, your Honor, is  
9 critical for withstandng a motion to dismiss, the pleading  
10 standards that have been articulated -- for instance, in the  
11 AFEX case. We have a lockstep pricing relationship that we  
12 have demonstrated between spot Bitcoin and Bitcoin futures  
13 prices. And we did that both for the CME as well as the CBOE.

14 And then the other regression that I would point your  
15 Honor to is that we didn't just take publicly available  
16 information and suggest that the defendants may have been  
17 replenishing their Tether holdings at the end of the month by  
18 liquidating Bitcoin; we actually have a regression that  
19 determines that. So I would just say that, you know, in terms  
20 of our complaint, in no way being derivative of what is out  
21 there from any other party, you know, we are by -- far and away  
22 we have the most original complaint.

23 So your Honor, you wanted me to go back to points 4  
24 and 5?

25 THE COURT: Yes, please.

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1 MS. LERNER: Okay. So just for point 4, I think we  
2 already really talked about it. I was going to just mention  
3 under the discretionary factors that we have been able to work  
4 with the defendants, with Mr. Walden. They've already agreed  
5 to accept service of process here in this district for the  
6 Young plaintiffs and to facilitate consolidation in order to  
7 expedite matters to get us here, as I explained. We also have  
8 the support of the Glancy firm that filed the Faubus action.

9 The last point that I would say is that the structure  
10 that's been proposed by Robbins Geller, at this point we see  
11 that as premature. It would be very inefficient at this point  
12 to run a subclass. It's also out of sync with the case law  
13 under *Treasury*, *AFEX*, and *Gold*, and it's unnecessary because  
14 there is no actual conflict.

15 And your Honor, you asked, you know, just as a last  
16 point, every case really involves novel law and facts. I mean,  
17 all of the cases that we see being cited in this case, your  
18 Honor, in order to make novel law are going to be cases that  
19 the Kirby-Radice team has already been involved in. We'd like  
20 to build on those cases. We work inclusively with other firms  
21 all the time. That's what we do in these class actions. We  
22 accommodate all varieties of leadership structures. But we  
23 really believe that by far, the Kirby-Radice team is best  
24 suited to be appointed in this case.

25 THE COURT: Anything else you'd like me to know?

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1 MS. LERNER: I would be happy to discuss any questions  
2 that your Honor has, but I think that we've covered a lot of  
3 the waterfront.

4 THE COURT: I think I'm fine. I believe -- but you'll  
5 tell me if I'm wrong -- that in giving me your reasons for why  
6 the Kirby-Radice team is the team that should be hired, you  
7 have implicitly explained why the other two teams should not be  
8 hired, but if there is something more specific -- I know they  
9 will not take offense, and I really do need to know, so if  
10 there's something specific you'd like to say with respect to  
11 either of the other teams, I'd be happy to hear from you on  
12 that point.

13 MS. LERNER: Your Honor, you know, we have great  
14 respect. We work with all these firms, you know, all the time.  
15 We have a long history working with other firms, so I think  
16 that we don't want to say too much else. I'm happy to take  
17 questions, but I'll rest at this time.

18 THE COURT: That is it. Thank you very much.

19 All right. Mr. Cochran?

20 MR. COCHRAN: Yes, your Honor.

21 THE COURT: Mr. Cochran.

22 MR. COCHRAN: Would it be okay if I present from here,  
23 your Honor.

24 THE COURT: Of course it would be. Thank you. I  
25 understand. And actually, I appreciate it, and the folks

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1 sitting next to you I'm sure do as well.

2 May I ask, sir, in light of what you've heard from  
3 Mr. Roche, Ms. Halligan, and Ms. Lerner, you're still  
4 persisting with your motion to be appointed interim counsel?

5 MR. COCHRAN: Yes, your Honor. In fact more so. I've  
6 been emboldened. But I have responses to a lot of what was  
7 said, so I can get to those or I can answer your questions,  
8 your Honor. Whatever you prefer.

9 THE COURT: No. Whatever you'd like to tell me, I'd  
10 like to hear.

11 MR. COCHRAN: So I will echo what's been said already.  
12 I think you have three groups of well-qualified lawyers before  
13 the Court. However, that's not the Rule 23(g) standard for  
14 interim class counsel. In particular, I think the Schneider  
15 Wallace and Selendy & Gay firms would be inappropriate because  
16 Rule 23(g)(1)(A)(i) looks to work counsel has done in the case.  
17 The Court must consider that factor. They've done nothing in  
18 the case that they have noted at any point. Rule 23(g) is not,  
19 you filed a deficient motion and then in the responses, well,  
20 I'm going to bring in other lawyers who have maybe more  
21 resources or more experience under the factors to try to fix  
22 that, which I believe is somewhat of what is going on here. So  
23 that's --

24 THE COURT: Wait, wait. Let me make sure I understand  
25 what you're saying. Do you suggest that they've actually just

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1 filed a placeholder complaint, or is it that the complaint,  
2 wittingly or otherwise, was inadequate and they're just trying  
3 to shore it up now by bringing in other law firms?

4 MR. COCHRAN: Your Honor, Roche is the only firm that  
5 filed a complaint.

6 THE COURT: I'm aware.

7 MR. COCHRAN: Schneider and Wallace did not file a  
8 complaint. They've said -- and the Selendy & Gay firm only  
9 came on in terms of the responses, so not even on the initial  
10 motion, and they've not said anything that they've done in the  
11 case with respect to their two firms. So I think that's  
12 inappropriate to appoint. I've actually never had a situation  
13 where a firm has come in, you know, midstream on a leadership  
14 motion and say, well, I'm going to add me to that group too.  
15 So I think that is inappropriate.

16 THE COURT: Well, then let me make sure I understand  
17 what you're saying. You're not disputing, or maybe you are  
18 disputing, that were they added to the Roche team, they would  
19 bring value; your point is that the inquiry for me has to have  
20 been what to date have they done, not what can you expect them  
21 to do if I appoint them as interim co-lead counsel.

22 MR. COCHRAN: Exactly, your Honor. Under  
23 Rule 23(g)(1)(A)(i), the Court must consider the work that the  
24 firms have done to date.

25 THE COURT: But what if the work that they've done to

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1 date includes meeting with the Roche firm, understanding the  
2 nature of the complaint, and bringing their own experience to  
3 bear on the state law causes of action and the anticipated  
4 class action issues and anticipated motion to dismiss? I mean,  
5 what I'm saying, inadvertently this time, is that their work may  
6 not be evident from the materials that are docketed, and yet  
7 may be evident from the submissions that they've made, their  
8 written submissions in connection with this motion and their  
9 presentation here today. Is that not what I am to consider?

10 MR. COCHRAN: Well, I think if they had something to  
11 say, they would have said it, your Honor, so I think it's not  
12 appropriate to really speculate about what they've done to  
13 date. They haven't said anything. It's not in the papers.

14 THE COURT: Well, they've told me today that they have  
15 been meeting and discussing how best to structure the team so  
16 that the strengths of the team are used best.

17 MR. COCHRAN: Yes, and that is perfectly appropriate  
18 for consideration, your Honor.

19 THE COURT: Okay. But you're saying that's not enough  
20 because two of the three legs of the tripod haven't really done  
21 anything with respect to the pleadings or the contemplated  
22 motion to dismiss opposition.

23 MR. COCHRAN: Right, your Honor. I think our view  
24 would be that it's more than putting together a leadership  
25 application that needs to be done.

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1                   So now the Radice firm has made much of their  
2 experience in the cryptocurrency space, the one cryptocurrency  
3 case, the *Wright* action in Florida, and have argued that  
4 somehow that endows them with substantially more expertise than  
5 my two cryptocurrency cases, notwithstanding the fact that  
6 those are actually class actions, which is what the language of  
7 the Rule 23(g) specifies, and they've been pending for a longer  
8 time than those. Now I don't think anybody can stand up here  
9 and claim decades of experience with cryptocurrencies. It's a  
10 new field. So I think that that factor, you know, to the  
11 extent the Court considers it, I think it actually favors our  
12 firm being appointed, but to be frank, I don't think anybody  
13 can claim to be the expert in this space. That case is still  
14 ongoing. Nobody can recover for anybody at this point.

15                  Now with that being said, I think in many respects,  
16 although it's a shiny new package in terms of the  
17 cryptocurrency nature of the case, the content is your classic  
18 pump-and-dump market manipulation scheme. And the Robbins  
19 Geller firm is among the most experienced firms in the country  
20 in this space. We've secured many of the largest recoveries in  
21 history, including the *Enron* class action, recently the  
22 *Interchange Antitrust Litigation*, which, again, under  
23 23(g)(1)(A)(i) is particularly relevant. It involves a claim  
24 that's at issue in this case, which Judge Brodie just signed  
25 off on at the end of last year.

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1                   And to look again, you know, by comparison at the  
2 Roche firm, you know, let's hold up this cryptocurrency  
3 experience. Well, if you look at the actual submission that  
4 they made in their opening papers -- and I agree they've tried  
5 to add on firms subsequently, add experience and add heft, but  
6 there's not significant plaintiff side class action experience,  
7 with the exception of Mr. Economides, who at the time he was  
8 working on those cases was an associate at my firm. So I think  
9 it's somewhat ironic that in their application to appoint  
10 themselves over Robbins Geller today, they're actually relying  
11 on cases where Mr. Economides was working under lawyers at my  
12 firm. And I think that relative lack -- I'm not questioning  
13 the qualifications of the lawyers. Again, I'm focused on just  
14 what the Rule 23(g) inquiry is. I think that inexperience  
15 really shows in the pleading, the way the case was framed.

16                 Your Honor, for example, paragraph 14 of the Roche  
17 complaint claims there's \$1.4 trillion in liability at stake,  
18 which is roughly the GDP of Spain. I think, you know, anybody  
19 can put some astronomical figure in a pleading; it's quite  
20 another thing to go out and actually demonstrate that you're  
21 able to get a significant recovery for your clients and for  
22 investors. So we think those factors heavily weigh in our  
23 favors, the knowledge of law and expertise.

24                 Now as to the investigation and the prefiling work,  
25 Robbins Geller has spent the most time of any of these firms in

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1 crafting the pleadings, developing a legal strategy that we  
2 believe provides the best avenue for success to the putative  
3 class.

4 THE COURT: Please back up a moment. I want to hear  
5 what you said again. You spent the most time, is that it?

6 MR. COCHRAN: I believe so, your Honor.

7 THE COURT: How do you know?

8 MR. COCHRAN: Oh, well, I guess we don't really know,  
9 but, you know, we --

10 THE COURT: I'm not disputing, sir, that you and your  
11 firm have spent a lot of time on this case, but when you use  
12 superlatives like "we spent the most time," I candidly just  
13 don't know. I don't think folks have given me to date an  
14 aggregate amount of time that the putative members of their  
15 interim co-lead counsel team have spent, and so I just worry  
16 about that. I want to keep you honest.

17 MR. COCHRAN: And I can explain what the basis is for  
18 that.

19 THE COURT: Please.

20 MR. COCHRAN: So your Honor, everybody became aware of  
21 this issue with the publication, not -- it wasn't a  
22 publication; it was the Griffin report, which came out in June  
23 of 2018.

24 THE COURT: Yes.

25 MR. COCHRAN: Okay. I actually called Professor

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1 Griffin after that report came out and talked with him about  
2 his paper and his analysis because I thought, if you're going  
3 to sue somebody for market manipulation, it's incredibly  
4 important that you understand this analysis. I also retained a  
5 market manipulation expert as a consulting expert to  
6 corroborate the findings of the Griffin report. However, we  
7 thought it was prudent to wait until that report received  
8 peer-reviewed publication. That way -- because at the time,  
9 Bitfinex was saying, this is not true. And we thought it was  
10 important to wait because through the peer review process, now  
11 the filings have a legitimacy from academic standards in that  
12 field saying this has a basis. So the Roche firm filed before  
13 that came out. We thought it was prudent to wait and see how  
14 that got -- that it was accepted, number one, and how the  
15 report changed. In fact, it did change in ways that actually  
16 made it a better case, in our view.

17 THE COURT: Has anyone retained Professor Griffin as  
18 their expert witness?

19 MR. COCHRAN: As far as I'm aware, no, your Honor, and  
20 it was very important to him that, you know -- he was not  
21 interested and partly because, you know, there was the peer  
22 review process ongoing at the time.

23 THE COURT: Fair enough.

24 Go ahead.

25 MR. COCHRAN: So again, we took that time; that time

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1 paid off. You know, before I was a lawyer, your Honor, I was a  
2 teacher, and I would give an assignment, and if the students  
3 came back in ten minutes and got all the answers wrong, they  
4 got a lower grade, but if they took their time and they got all  
5 the answers correct, they got a higher grade. And I think the  
6 Rule 23(g)(1)(A)(i) inquiry looks at that. It's not who is  
7 first to the courthouse but who put in the superior pleading  
8 and superior work product.

9           And I'm just going to point out what I believe are a  
10 couple -- there are many examples I can give, but I'm going to  
11 point out a few from the Roche pleading that I think are very  
12 concerning. The first is the class definition. The Roche firm  
13 has defined the class to include everyone who has owned or  
14 transacted a cryptocurrency over a six-year time frame. A  
15 cryptocurrency is an asset class. It would be akin to defining  
16 the class as everyone who owned a stock or everyone who owned a  
17 bond. The definition is hopelessly overbroad. But again, I  
18 think that speaks perhaps to the relative lack of experience to  
19 actually prosecuting, from the plaintiff's side, one of these  
20 cases through the merits phase of the proceedings, where you  
21 actually have to put on evidence at summary judgment and at  
22 trial, sustain your burden of proof in front of a judge and  
23 jury.

24           THE COURT: One moment, please, sir.

25           I hear what you're saying, and if we were just talking

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1 about the complaint on the day it was filed, the Roche  
2 Leibowitz complaint on the day it was filed, I might agree with  
3 you. But now I have a whole bunch of lawyers in this room, the  
4 majority of whom seem to think that we should be proceeding in  
5 a way contrary to the way you're defining the class. So are  
6 they all wrong?

7 MR. COCHRAN: Well, your Honor, I don't -- if I may.

8 THE COURT: You may.

9 MR. COCHRAN: I don't know that I agree that we have  
10 everybody -- it feels that way. The Kirby firm filed a class  
11 that is not -- with the same definition. I'm sure they filed  
12 the one they felt was best. That's on behalf of Bitcoin and  
13 Bitcoin futures.

14 THE COURT: Right.

15 MR. COCHRAN: Okay. That's much closer to my class  
16 definition, and I don't think that presents the same problems,  
17 because they've done these types of cases; they know what it  
18 takes to actually prove your case. I don't think anybody can  
19 stand up here and say, we're going to prove every  
20 cryptocurrency. There are hundreds, if not thousands of  
21 cryptocurrencies in existence. We have market-specific claims.  
22 There is no allegation in any of the three complaints filed by  
23 any law firm that defendants took specific actions with  
24 specific intent to manipulate any of those other markets.

25 THE COURT: What about the graph I was just handed

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1 today, which is an exhibit to the complaint?

2 MR. COCHRAN: That's not the actions of defendants.

3 That's potentially the effect of defendants' market  
4 manipulation scheme, but the allegations are consistent across  
5 all three of the complaints, which is that defendants issued  
6 Tethers, used those Tethers to buy Bitcoin.

7 THE COURT: Okay.

8 MR. COCHRAN: That's the case. That's all anybody has  
9 alleged, as far as I'm aware, and Griffin has found you could  
10 have some of these other markets who were impacted but  
11 certainly not all cryptocurrencies in existence, which is going  
12 to create huge problems for this case. If their liability is  
13 anything close to the \$1.4 trillion that the Roche firm is  
14 suggesting, you have a limited fund situation. I don't need to  
15 know the finances of Bitfinex to know they don't have a  
16 trillion dollars on hand to pay the claim. So you're  
17 essentially taking money and potential recovery from the true  
18 victims of defendants' scheme and complicating things and  
19 making it less likely that they'll actually receive recovery.

20 Now I do want to make one point of clarification. We  
21 are not asking the Court to define a subclass or choose a class  
22 or whatever today. That is not our request. Our point is that  
23 under the Rule 23(g) factors, the Court is to look at the work  
24 that plaintiff's counsel has done to date and the adequacy of  
25 representation. And we think of the firms here, we alone have

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1 made it important to put the true victims, the Bitcoin  
2 purchasers, front and center. If we were appointed lead of the  
3 case, we would be lead of the whole consolidated action, and  
4 just like any firm here, in that same situation, we owe a  
5 fiduciary duty to the class and define the class as we think is  
6 best, just like they said they plan to do.

7 THE COURT: All right. But assuming you are so  
8 appointed and you file a consolidated amended class action  
9 complaint, how will you define the class?

10 MR. COCHRAN: I think we'll add the futures  
11 potentially, because I think that there's a way to do that that  
12 is not creating this type of a conflict. That's more commonly  
13 done. I think it's extremely unlikely that, unless there's  
14 some -- it's not in their complaint, but unless there's  
15 something that there's evidence that defendants took specific  
16 actions to manipulate other markets, that we're just going to  
17 start throwing in other markets as part of this case, because  
18 it's a market manipulation case.

19 THE COURT: Please continue, sir.

20 MR. COCHRAN: So I think, again, that points to the  
21 relative lack of experience.

22 The other big red flag for us, they failed to plead  
23 actual injury in the case. Second Circuit in 2018 said in  
24 these market manipulation cases under the CEA, in the antitrust  
25 action, that's a requirement. You must plead that. Instead,

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1 the Roche firm says, well, our clients owned cryptocurrencies.  
2 Well, that's not enough under controlling law. And the Kirby  
3 firm says, well, they transacted in cryptocurrencies that  
4 artificially inflated prices. Again, that's not enough under  
5 controlling Second Circuit law. The reason being, because you  
6 can transact -- and this is what the Second Circuit said in the  
7 *Total Gas* case -- and make money. Let's say you bought Bitcoin  
8 in 2009; you sold it in December 2017 at the height of the  
9 asset bubble. You could have made a lot of money. You would  
10 have no claim, you would have no damages, you would not be an  
11 adequate class representative, and you might not even be a  
12 member of the class. The defendants raised it in their motion  
13 to dismiss letter. The Roche firm, for whatever reason --  
14 inexplicable to me -- declined to amend their complaint. We  
15 raised it again in our motion for interim class counsel  
16 briefing. Nobody has come forward and said what the actual  
17 transactions are. And this again gets to the work plaintiff's  
18 counsel has done in the case.

19 If I may, I'm just going to quote the Second Circuit.  
20 889 F.3d at 113-114. "The level of detail required will depend  
21 on the facts of the case -- the more different the contracts  
22 and the more distant the contracts traded, the more work a  
23 plaintiff will need to do to make the connection between a  
24 defendant's manipulation and a plaintiff's injury." Your  
25 Honor, we did that work.

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1           And again, you know, this idea that our complaint is  
2 somehow derivative of theirs, it's easily disprovable. We all  
3 have the complaints. Look at the complaints. I had a draft of  
4 my complaint done before they ever filed their case. We have  
5 different claims, different class, different class period,  
6 unique allegations, different set of defendants. So it's  
7 simply not true.

8           And I do think it's somewhat ironic to cast aspersions  
9 on the work that my firm has done and, frankly, the work that  
10 the Kirby firm has done, which also we believe reflects  
11 independent work product, while at the same time asking to  
12 appoint two firms who have to date not done anything other than  
13 work with counsel on how they're going to present their  
14 leadership application, as far as we're aware. So we think  
15 under that prong, the work to date prong, we clearly win that  
16 as well.

17           And then just briefly on the financial resources,  
18 which is the last prong, your Honor, we are the only  
19 application before the Court that's a single firm. We are the  
20 largest firm in the country that specializes in this type of  
21 work. I believe we're twice the size of the Roche triumvirate  
22 of three firms. We're many multiples of any other firm here.  
23 200 lawyers. Many of the most preeminent class action  
24 litigators in the country, an in-house team, which saves the  
25 class money, an in-house team of investigators, forensic

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1 accountants, damage specialists, trial support staff.

2 And most importantly, your Honor, we have a track  
3 record of taking these big complicated cases the distance. We  
4 were counsel, for example, on the *High Frequency Trading* case.  
5 That's another -- that's in front of Judge Furman -- that  
6 presents complex novel issues, huge amounts at stake, and we've  
7 been prosecuting that case successfully for years. We've gone  
8 to trial.

9 The *Household* case is a great example. It took us 14  
10 years. We won at trial, and we took it up to the Seventh  
11 Circuit. Came back down. On the precipice of a second trial,  
12 we were able to settle the case for over \$1½ billion, which is  
13 the largest posttrial securities class action recovery ever.  
14 But that was after a cash outlay of over \$30 million; 14 years  
15 of work, over \$30 million.

16 Now I do have a concern about the Roche firm being  
17 able to take on a case of this magnitude because they're a  
18 relatively new firm. Again, not talking about the quality of  
19 the lawyers.

20 THE COURT: When you say the Roche firm, you mean the  
21 entire team or just the Roche Freedman firm, sir?

22 MR. COCHRAN: Well, just the Roche firm.

23 THE COURT: Okay. But they're not going it alone,  
24 they say. They've got two other firms joining them for this.  
25 Are you saying collectively their financial resources would not

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allow -- I'm sorry. You'll have to excuse me if I pause. The idea of 14 years of seeing you all before me is a little -- of course, that's the worst case scenario. Thank you.

But assuming, as I think we ought to, that the litigation goes on for a period of years, and it involves substantial resources, however that is defined, you don't think the other two teams could handle that?

MR. COCHRAN: The issue, your Honor, is that the other two firms they brought in are inappropriate for appointment under Rule 23(g).

THE COURT: Oh, so I shouldn't even consider them.

MR. COCHRAN: Yes. That's exactly correct.

THE COURT: But one of the things that struck me about your submission was that you were actually suggesting intraclass conflicts, and you started talking about that, but do you want to speak more about that issue, sir.

MR. COCHRAN: Absolutely, your Honor.

So we think that there needs to be somebody who's committed to representing Bitcoin purchasers. We're the only firm that has specified the actual injury in the Bitcoin market. That's in paragraph 20 of our complaint. That's another reason it took us a little longer to file our case, because we wanted to get it right. The conflict, potentially -- again, it's not something where you have to create a subclass at this phase. That's not what we're saying.

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1 What we're saying is it's important that the Robbins Geller  
2 firm be a part of the leadership structure because the way that  
3 the case is framed is on behalf of -- primarily of Bitcoin  
4 purchasers as victims. The conflict is created not by the  
5 Kirby team's complaint but by the Roche team. The way they've  
6 defined the class creates a textbook situation for Bitcoin  
7 purchasers because you have a limited fund scenario. There is  
8 a larger liability than the defendants could ever hope to pay  
9 in all of the years, you know, for a very, very, very long  
10 time. They've said over \$1.4 trillion. So now there's only so  
11 much money to go around, so you're going to argue that, well,  
12 these guys who bought Altcoin or Litecoin or, you know,  
13 Scooby-Doo coin -- there's just so many coins; there's  
14 literally hundreds of those -- deserves some of that pot too.  
15 Well, guess what? You're taking it away from the people who  
16 have been totally decimated by this scheme, and that's our  
17 client, and it's incredibly important that their interests are  
18 put front and center, and that's what we're going to do. And  
19 we will absolutely -- if we were to, you know, receive the  
20 honor of being appointed interim class counsel here, we're  
21 going to take a hard look. If the Bitcoin futures market has a  
22 colorable basis and a pleadable basis under Rule 11 and it  
23 makes sense, they will be added in the complaint. And the same  
24 will be true to the extent we have other markets. I just  
25 haven't seen it yet. They didn't put it in the complaint.

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1 This graph they held up doesn't satisfy the elements of the  
2 claim, which is what, at the end of the day, you have to do for  
3 these folks to be truly victims and have a claim here. So  
4 that's a big, big problem in this case.

5 THE COURT: You spoke earlier about the resources of  
6 the Robbins Geller firm, and certainly I've heard of the firm,  
7 and I know their work in some of the class action cases. I  
8 know you have experience with the antitrust issues, with the  
9 Commodities Exchange Act issues. Other than what you told me  
10 earlier, how deep is your bench with respect to Bitcoin?

11 MR. COCHRAN: It's as deep as anybody. Again --

12 THE COURT: That's the issue. Yes.

13 MR. COCHRAN: I can tell your Honor, I helped develop  
14 this area, developing of cryptocurrency class actions. I filed  
15 and worked on one of the earliest of these. There was a rash  
16 of these cases a couple years ago. So in the height of  
17 Bitcoin, in 2017, all of these follow-on issuers thought, oh,  
18 we can make a lot of money; we'll make our own coin and issue  
19 it. The problem was they were violating the federal securities  
20 laws. So we have a case. It's in San Francisco Superior  
21 Court. Roche falsely claims that ours was derivative of the  
22 federal case. Actually the state cases were filed first. They  
23 got moved. One got remanded, one stayed, removed. The federal  
24 cases came second. And they helped lay the groundwork for how  
25 do you litigate one of these cases. And we're very far down

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1 the stream, but again, I can't get up here and say, you know,  
2 we've been doing this for decades. We have not. I've been  
3 doing it now I guess about three years, I'd say. Two -- over  
4 two years. Between two and three years. So I think that's  
5 about as good as it gets, in terms of class actions, right?  
6 And I've talked with and worked with many counsel on different  
7 issues. We are in discovery heavily in the *Dynamic Ledger*  
8 case. So we have some, at least.

9 THE COURT: Okay. Given that you are speaking last,  
10 I'm going to give the other two teams an opportunity to speak  
11 again in case there are things that have come up in your  
12 presentation that they had not known to address. You'll let me  
13 know if at the end you need to be heard again, but I do think  
14 you've managed to respond.

15 MR. COCHRAN: Thank you, your Honor.

16 THE COURT: And thank you very much.

17 Mr. Roche and Ms. Halligan, do you want to be heard  
18 again.

19 MS. HALLIGAN: Sure, your Honor. Thank you. And I'll  
20 be very brief.

21 THE COURT: Of course.

22 MS. HALLIGAN: So just to respond to a couple of the  
23 points that came up, your Honor, if I can.

24 First of all, with respect to the scope of the class  
25 and whether or not it is too broad to be manageable, I think

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1 that the difference is in part in the theory of what's  
2 happening here. As our complaint lays out, the nub of the  
3 difficult -- of the violation here is not just with respect to  
4 Bitcoin itself but leveraging the ability to control the price  
5 of Bitcoin, to control prices and reduce competition in the  
6 broader cryptocurrency market, and that's laid out in the  
7 Griffin report. And so from our point of view, questions about  
8 allocation are not a reason to trim the class so dramatically  
9 at this juncture, and obviously if discovery suggests that it  
10 should be narrowed, then it would be. But not at this point.  
11 I think it's leaving way too much on the table in terms of  
12 potential violations.

13           Secondly, with respect to the point that we did not  
14 sign on to the initial complaint that was filed, rather than  
15 file largely duplicative complaints, we looked closely at the  
16 complaint that the Roche firm had filed, and for the reasons  
17 that I laid out for your Honor, we thought that it very well  
18 captured the harm here, laid out the basis for the causes of  
19 action, and have looked very closely, as I hope our  
20 presentation today makes clear for the Court, and done a  
21 substantial amount of work in that window. We do anticipate  
22 filing an amended complaint. I think that there are a number  
23 of issues that we would look at, including, for example,  
24 whether or not it is appropriate to provide specific dates with  
25 respect to some of those transactions and also whether or not,

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1       in light of the updated Griffin report -- which of course came  
2       down after our complaint was filed -- whether there are  
3       additional allegations that are appropriate and whether there  
4       is anything further and more specific to say, at a minimum,  
5       about the six other cryptocurrencies that are identified in his  
6       report. So we do anticipate doing that, and I think that the  
7       work that we would do in that regard and the work we did to  
8       prepare to come in and talk to your Honor today certainly is  
9       something that's fair to take into account.

10           In terms of whether there's a conflict here, I think  
11       the case law is clear that it is way too premature to decide  
12       that there is some sort of intraclass conflict. We believe the  
13       issues, the classes would be aligned, but in any event, there's  
14       time to address that down the road, should it be an issue, and  
15       the precedence is clear that that's the appropriate time, not  
16       with respect to choosing who should be interim class counsel.

17           Finally, with respect to resources, your Honor, we are  
18       more than able to take on the challenges that this case  
19       presents. Mr. Schneider's firm, as I think is detailed in our  
20       papers, has been doing class action litigation for a very long  
21       time. We have been doing very complex financial litigation,  
22       including, for example, a case on behalf of the FHFA against, I  
23       don't know, ten other law firms on the other side and about a  
24       dozen banks, so I think we're very well able to handle very  
25       complicated discovery, to do it efficiently.

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1           We have, at Selendy & Gay alone, at this point about  
2 50 attorneys and staff attorneys that bring us up to about 150  
3 folks, so we are, while efficient for sure, able to pull in  
4 whatever resources are necessary. We also have financial  
5 analysts and industry specialists who are on staff at the firm  
6 and plenty of litigation support. So I'm confident that the  
7 resources are not an issue here.

8           And I'd be happy to answer any other questions the  
9 Court has.

10          THE COURT: I don't have any. Thank you very much.

11          Ms. Lerner?

12          MS. LERNER: Thank you again, your Honor.

13           There have been a lot of concessions here from the  
14 other counsel and adoption of things I think we've already gone  
15 over, so I'm going to be extremely brief.

16           The Robbins Geller firm has suggested that you need to  
17 plead specific dates of transactions in order to withstand the  
18 motion to dismiss. I just want your Honor to know that our  
19 experts have checked. Each of our named plaintiffs have traded  
20 on a date affected by the manipulation that we have already  
21 pled. I just think that this further demonstrates that our  
22 complaint already satisfies a higher pleading standard.

23           The other complaints clearly have regurgitated a lot  
24 of publicly available academic information. I think that I've  
25 shown today that our complaint is groundbreaking.

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1                 In terms of questions about class definition,  
2 defendants, relevant time period, of course if appointed  
3 interim lead counsel, we would subsequently anticipate filing a  
4 consolidated amended complaint and we would refine our  
5 allegations. But right now, you know, as of now, your Honor, I  
6 would say that we've done the work. We filed the most  
7 original, the most investigative, and the most comprehensive  
8 complaint, and we are ready to go forward.

9                 THE COURT: All right. Thank you very much.

10                 Mr. Cochran, anything else?

11                 MR. COCHRAN: No, your Honor, unless you have any  
12 questions.

13                 THE COURT: I do not. Thank you.

14                 MR. COCHRAN: Thank you.

15                 THE COURT: Let me please do this. It was my hope to  
16 decide the motion this afternoon, but my concern is -- and I'll  
17 be very transparent with you -- I have a criminal sentencing in  
18 30 minutes, and I don't want to shortchange that defendant. So  
19 what I'd like to do is to provide a time where folks can call  
20 in and I'll give you a decision, so let me see when I can find  
21 such a time.

22                 And obviously not everyone in this courtroom has to  
23 call in.

24                 Thursday at 4:00, is that a date and time that works  
25 for people? I have some conferences until 4:00. Does 4:00

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1 work?

2                 Okay. So Thursday at 4:00. We will issue a minute  
3 entry that will have the call-in information. We'll be calling  
4 into this system in this courtroom. And I will give you a  
5 decision then.

6                 You've made my decision very difficult, which is a  
7 testament to all of your abilities, and I thank you for that.  
8 I just want to look at the materials that I've been given in  
9 light of some of the arguments that you've made, and again, I  
10 thought I'd have more time than I do to deal with this and to  
11 prepare for sentencing.

12                 Mr. Roche, or Ms. Halligan, anything else to address  
13 in this proceeding?

14                 MR. ROCHE: No, your Honor.

15                 THE COURT: Thank you very much.

16                 Ms. Lerner, anything else to address in this  
17 proceeding?

18                 MS. LERNER: No, your Honor.

19                 THE COURT: All right. Mr. Cochran, anything else to  
20 address in this proceeding?

21                 MR. COCHRAN: No, your Honor.

22                 THE COURT: Okay. Mr. Linkh, because you're here,  
23 anything in this proceeding?

24                 MR. LINKH: No, your Honor.

25                 THE COURT: Thank you.

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1           And folks at the back table, anyone want to say  
2 anything?

3           MR. WALDEN: No, your Honor.

4           THE COURT: All right. Thank you for your time and  
5 for your preparation for this conference, and I'll talk to you  
6 Thursday at 4:00. Thank you very much.

7           THE DEPUTY CLERK: All rise.

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